

EXHIBIT 10

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----)

5 In Re:) SIPA LIQUIDATION
6 BERNARD L. MADOFF INVESTMENT) No. 08-01789 (BRL)
7 SECURITIES LLC,) (Substantively
8 Debtor.) Consolidated)
9 -----)

10 IRVING H. PICARD, Trustee of the)
11 Liquidation of Bernard L. Madoff)
12 Investment Securities LLC,)

13 Plaintiff,)

14 vs.)

15 J. EZRA MERKIN, GABRIEL CAPITAL,)
16 L.P., ARIEL FUND LTD., ASCOT)
17 PARTNERS L.P., GABRIEL CAPITAL)
18 CORPORATION,)

19 Defendants.)
20 -----)

21 * * C O N F I D E N T I A L * *

22 VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.
23 New York, New York
24 July 8, 2015

25 Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR
JOB NO. 95461

1 S. Pomerantz

2 holdings?

3 A No.

4 Q That is not a problem for you?

5 A It's a Russell 3000 index fund.

6 Q And so, it's okay with you to not
7 have the breakdown of individual holdings?

8 A I don't need to see a list of 3,000
9 holdings. If I want to look at the annual
10 report, I could do that.

11 Q Have you ever done that?

12 A Maybe years ago.

13 Q How do you know that that account
14 in fact owns all 3,000 stocks that you think
15 it owns?

16 A I think there is -- how do I know
17 it owns 3,000? They have represented to me
18 that it owns 3,000. It performs like it owns
19 3,000. The returns match the returns of the
20 index.

21 I have no reason to believe that it
22 doesn't own 3,000. It behaves exactly the
23 way I expect it to behave.

24 Q And that's good enough for you?

25 A Not -- that fact alone is not good

1 S. Pomerantz

2 enough. I mean, there is -- there is a brand
3 that is involved. I go to their offices
4 periodically. I meet with a lot of people --
5 as I said, I have about ten contacts in the
6 company -- on a variety of issues involving
7 IFIC. So I meet with, sometimes meet with
8 all of them, or sometimes meet with one or
9 two or three.

10 I feel very comfortable. I have no
11 reason to believe that something is happening
12 that is not as being represented.

13 Q I think you used the term "trust
14 but verify" --

15 A Yes.

16 Q -- in your report; right?

17 A Yes.

18 Q So in terms -- I understand the
19 "trust," and I understand people trust
20 Goldman Sachs. In terms of the "verify,"
21 what do you do to verify those
22 representations, other than go to their
23 offices and meet with people?

24 A I mean, this relationship has been
25 going on for about seven years. I do get

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2 Q How much of your time was invoiced
3 by Duff & Phelps to the trustee?

4 A Approximately \$150,000.

5 Q And of the approximately million
6 dollars that you have invoiced the trustee,
7 how much relates to your time versus
8 employees of Duff & Phelps who are supporting
9 you?

10 A I would say about 15 percent of it
11 is for my time. Fifteen to 20 percent of
12 that is for my time.

13 Q And the rest is for Duff & Phelps
14 employees?

15 A Yes.

16 Q What role did employees of Duff &
17 Phelps have in connection with your opinions
18 and reports?

19 A I'm sorry, say that again.

20 Q What role did the employees of
21 Duff & Phelps have in connection with your
22 opinions and reports?

23 A They have no role in terms of my
24 opinions. The opinions are mine.

25 As far as their role in the

1 S. Pomerantz

2 reports, they were instrumental in writing
3 some of the report under my direction, and
4 performing a variety of analyses, again,
5 under my direction, that I was interested in.

6 Q Were there certain sections of your
7 report that employees of Duff & Phelps helped
8 to draft?

9 A I would say that they helped to
10 draft most of the paragraphs in one form or
11 another.

12 Q And was that also the case in the
13 Katz/Wilpon case?

14 A Yes.

15 Q And that's not typically how you
16 work as an expert; is that right?

17 A It depends. Sometimes I work like
18 this. Sometimes I work on my own. Sometimes
19 I hire people to work as consultants for me
20 to help draft reports.

21 Q All right. And there are certainly
22 times where you have testified that your
23 process is to open a Microsoft Word document
24 and type everything yourself, edit yourself,
25 and not save any subsequent or additional

1 S. Pomerantz

2 A Well, I just gave you examples in a
3 litigation context.

4 Q Right. So, my question is: In
5 your due diligence of -- in your performing
6 due diligence on an investment advisor or
7 hedge fund manager, have you ever reviewed
8 trade confirmations?

9 A No. I reviewed transaction-level
10 data, and I would input transaction-level
11 data into systems to perform certain
12 analyses. But I -- I never had a need to
13 look at the confirmations.

14 Q So, you never asked to look at
15 confirmations in any of the due diligence
16 that you have done over the last 20 years?

17 A I was never -- I never had a need
18 to do that.

19 Q And in your -- in due diligence --
20 by the way, when you referred to your work as
21 an expert in the tax shelter cases as due
22 diligence, that was always a review after the
23 fact after a challenge by the IRS; correct?

24 A Yes.

25 Q Okay. So in your work performing

1 S. Pomerantz

2 due diligence on investment advisors or hedge
3 funds, have you -- have you had occasion
4 to -- strike that.

5 In your work performing due
6 diligence on hedge fund managers or on
7 investment advisors, have you ever compared
8 on a transaction-by-transaction basis
9 transaction price versus the daily high-low
10 range? Has that been something you have done
11 in your due diligence work?

12 A I have looked at transaction prices
13 against VWAP, but I have not looked at
14 transactions versus highs and lows. But I
15 have looked against VWAP as part of my due
16 diligence.

17 Q Why haven't you looked at
18 transactions versus highs and lows as part of
19 your due diligence?

20 A I never had a reason to.

21 Q And I take it you don't believe
22 that the due diligence that you have
23 performed has been faulty for not having
24 looked at that; correct?

25 A It depends on the circumstances.

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2 In the circumstances that I have worked in, I
3 never had a need to do that. I -- as I said,
4 my objective was to understand things as best
5 as I could, and I felt that I always reached
6 that objective by using the tools that were
7 necessary.

8 Q Looking back over the, you know,
9 30 years that you have been involved in the
10 investment industry or the, you know, 20 or
11 so years where you have had some due
12 diligence responsibilities, have you ever had
13 occasion in hindsight to think that your due
14 diligence was subpar?

15 A You know, there was a time when I
16 actually was lied to, and I didn't discover
17 it for a few months. I don't know -- there
18 really was no way, looking back on it, for me
19 to have known that I was being lied to, but I
20 was, and as soon as I knew, as soon as it was
21 possible for me to know, I knew.

22 Q What were you lied to about?

23 A Actually, it was a particular hedge
24 fund that actually said they were not going
25 to engage in market timing, and that it was

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2 Exhibit 3. Is that it? Is that what --

3 MR. STEINER: I think he was most
4 recently referring to Exhibit 1, which is
5 his report.

6 THE WITNESS: No, 3.

7 MR. SHEEHAN: 3, this thing. He
8 was reading this.

9 THE WITNESS: Counsel, is this a
10 good time for a break?

11 MR. STEINER: Sure.

12 MR. SHEEHAN: What's that?

13 MR. STEINER: He would like a
14 break.

15 THE VIDEOGRAPHER: The time is
16 3:28 p.m. This is the end of tape number
17 three.

18 We are off the record.

19 (Recess taken.)

20 THE VIDEOGRAPHER: The time is
21 3:49 p.m. This is the start of tape
22 number four.

23 We are on the record.

24 BY MR. STEINER:

25 Q Now, Dr. Pomerantz, with respect to

1 S. Pomerantz

2 the various quantitative analyses in your
3 report, did you perform those analyses, or
4 did the Duff & Phelps employees perform those
5 analyses?

6 A Combination of both. I mean, I --
7 some of them I did by myself. Sometimes
8 somebody else did them and I reviewed them.

9 Q Which ones --

10 A Check them over.

11 Q Which ones did you do yourself?

12 A I can't recall the specifics of it.
13 I know that there is an analysis here that
14 has to do with daily volatility versus
15 monthly versus quarterly, and I remember that
16 was something I did myself.

17 Most of the others I think I
18 reviewed somebody else's work. But I -- I
19 had to tell people what the calculation was
20 that I wanted to do. In some cases, the
21 analysis is pretty computer intensive, other
22 cases it's not.

23 But that is the only example that I
24 can think of that I did by myself. The rest,
25 I think I just told someone what to do and

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2 then checked the results.

3 Q When you told someone what to do
4 and checked the results, how did that process
5 work?

6 A Usually I would sit down and tell
7 them, tell them what to do, how to do it.
8 Sometimes they understand what I mean.
9 Sometimes I have to write down a formula.
10 And most of the -- most of the analysis is
11 residing within spreadsheets, where these
12 charts are basically all coming out of a
13 spreadsheet. And the data that's behind the
14 analysis is in the same spreadsheet, so I can
15 trace back the formulas.

16 Q And by the way, one of the exhibits
17 to your report includes all the documents
18 that you reviewed in connection with your
19 report; right?

20 A Yes.

21 Q Approximately how many pages did
22 you review in connection with issuing your
23 report?

24 A Me, personally?

25 Q Yes.

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2 Q And so, if you look at Schedule A
3 to appendix two.

4 A Yes.

5 Q That is the list of documents that
6 you provided and annexed to the report that
7 you signed as to the documents that you
8 considered in forming your opinions; correct?

9 A Yes.

10 Q But you didn't personally review or
11 consider all of these documents; correct?

12 A That's correct.

13 Q So, if I wanted to know which
14 documents you considered, how would I make
15 that determination?

16 A I think that I reviewed personally
17 documents that are a part of the opinions
18 that I am offering, so, if there is an
19 analysis here about transactions, I have
20 looked at a subset of all of the documents
21 that discuss transactions.

22 I can't tell you which ones I
23 looked at. You know, if there are 30,000
24 confirmations, I could tell you I looked at
25 ten, but I couldn't tell you which ten of

1 S. Pomerantz

2 those 30,000.

3 Q You didn't keep track?

4 A No.

5 Q And you didn't feel that that was
6 important to do?

7 A I -- no, I don't see the relevance
8 of it.

9 Q No one asked you to keep track of
10 what documents you actually reviewed?

11 A No.

12 Q And you said if there were 30,000
13 confirmations, you looked at something like
14 ten?

15 A I personally may have looked at ten
16 to -- someone -- yeah, I personally looked at
17 ten to confirm that what I am being told
18 about the confirmations is -- is accurate.
19 For example, I have talked about how the
20 confirmations are backwards. The buyer is
21 the seller, or the seller is identified as
22 the buyer. Have I looked at 30,000
23 transactions, to tell you that I have noticed
24 that on 30,000? No, I haven't. But I have
25 looked at ten, and I have seen that on the